

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

IN RE WASHINGTON MUTUAL, INC.
SECURITIES LITIGATION

This document relates to: **ALL ACTIONS**

CASE NO. 08-md-1919 MJP

Lead Case No. C08-387 MJP

ORDER AWARDING ATTORNEYS' FEES AND EXPENSES

This matter came on for hearing on November 4, 2011 (the “Settlement Hearing”) on Lead Counsel’s motion to determine, among other things, whether and in what amount to award Lead Counsel in the above-captioned consolidated securities class action (the “Action”) fees and reimbursement of expenses. The Court having considered all matters submitted to it at the hearing and otherwise; and it appearing that notice of the Settlement Hearing substantially in the form approved by the Court was mailed to all members of the Class who were reasonably identifiable, and that a summary notice of the hearing substantially in the form approved by the Court was published in *The Seattle Times* and the national edition of *The Wall Street Journal* and was transmitted over the *PR Newswire* pursuant to the specifications of the Court; and the Court having considered and determined the fairness and reasonableness of the award of attorneys’ fees

1 and Litigation Expenses requested; and all capitalized terms used herein having the meanings as
 2 set forth and defined in the respective stipulations of settlement.

3 NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

4 1. The Court has jurisdiction over the subject matter of the Action, Lead Plaintiff, all
 5 Class Members, and the Defendants.

6 2. Notice of Lead Counsel's application for attorneys' fees and reimbursement of
 7 litigation expenses was given to all Class Members who could be identified with reasonable
 8 effort. The form and method of notifying the Class of the application for attorneys' fees and
 9 expenses met the requirements of Rule 23 of the Federal Rules of Civil Procedure, the Private
 10 Securities Litigation Reform Act of 1995, 15 U.S.C. §§ 77z-1(a)(7), 78u-4(a)(7), due process,
 11 and any other applicable law, constituted the best notice practicable under the circumstances, and
 constituted due and sufficient notice to all persons and entities entitled thereto.

12 3. Lead Counsel is hereby awarded attorneys' fees in the amount of 21% of total of
 13 the Settlement Funds, which sum the Court finds to be fair and reasonable, and \$5,347,015.07 in
 14 reimbursement of litigation expenses, which expenses shall be paid to Lead Counsel from the
 15 Settlement Funds. As provided for in the stipulations of settlement, the award of attorneys' fees
 16 shall be allocated among Plaintiffs' Counsel in a manner which, in the opinion of Lead Counsel,
 17 fairly compensates Plaintiffs' Counsel for their respective contributions to the prosecution and
 18 settlement of the Action. Fees shall be allocated only based on actual legal work performed by
 19 Plaintiffs' Counsel to advance this litigation, at rates that do not exceed the top rate billed by
 counsel for Plaintiffs based in Seattle.

20 4. The Court finds a reduction of the fee request by 1.5% to be reasonable and
 21 justified in light of the Court's review of Plaintiffs' counsel's performance, the benefit to the
 22 Class, the risks of litigation, and the lodestar cross-check. At oral argument on Plaintiffs' fee
 23 petition, the Court laid out several reasons why it is not convinced that Plaintiffs' counsel's work
 24 necessarily produced unequivocal benefits for the Class. These reasons largely focused on
 Plaintiffs' unsuccessful efforts in their first consolidated complaint and the first round of motions

1 to dismiss. The Court also explained that the fee award cannot be justified as reasonable where
2 the lodestar cross-check is based on hourly rates exceeding the rate of Bradley Keller, Plaintiffs'
3 counsel located in Seattle. Throughout this complex case, Mr. Keller served as the counsel
4 designated to speak for the Plaintiffs and he has added immeasurable benefit to the Class and the
5 settlement by artfully navigating a large team of out-of-district lawyers through the rigors of
6 litigating before this Court. This case is located Seattle and all of the parties knew that this is
7 where the case was to be tried. Although the case was part of an MDL, the member cases were
8 joined to the Seattle-based filing. The parties were cautioned at the start of litigation that the
9 Court would evaluate any fee request based upon the rates of local advocates of exceptional
10 quality and not based upon rates from outside the District. The Court has been made aware that
11 local Seattle rates vary, but it is abundantly clear that they do not come close to matching the
12 rates proposed by Bernstein Litowitz Berger & Grossman.¹ In performing the lodestar cross-
13 check, the Court is to determine the reasonable hourly rate of counsel based on the prevailing
14 market rates charged by attorneys of comparable skill and experience in the relevant community.
15 See Blum v. Stetson, 465 U.S. 886, 895 (1984). The Court determines that the benchmark for
16 quality and experienced counsel in this community does not exceed \$525 an hour. The Court
17 therefore caps the reasonable hourly rate for any attorney at no greater than Mr. Keller's hourly
18 rate of \$525. The Court is particularly convinced that the partner rates claimed by Bernstein
19 Litowitz Berger & Grossman (ranging from \$700 to \$975 an hour) are excessive. Based on the
20 Court's calculations with rates capped at \$525 an hour, the unmodified lodestar is
21 \$36,631,085.25. In considering the lodestar multiplier, the Court finds that a multiplier of 1.2 is
22 reasonable and properly reflects the risk of non-payment and the challenges Plaintiffs' counsel
23 faced in pursuing this contingency-based case. This produces a modified lodestar figure slightly
24 north of 21% of the Settlement Funds. The lodestar confirms that an award of 21% of the

¹ The Court was provided a spreadsheet comparing billing rates that will be separately filed as an exhibit to this order.

1 Settlement Funds is reasonable and adequate to reward Plaintiffs' counsel for the tangible benefit
 2 produced for the Class and the risks they undertook.

3 5. In making this award of attorneys' fees and reimbursement of expenses to be paid
 4 from the Settlement Funds, the Court has considered and found that:

5 (a) The Settlements have created funds totaling \$208.5 million in cash that
 6 have been funded into escrow accounts pursuant to the terms of the respective stipulations of
 7 settlement and have been earning interest, and that numerous Class Members who submit
 8 acceptable Proof of Claim Forms will financially benefit from the Settlements that occurred
 9 because of the efforts of Plaintiffs' Counsel;

10 (b) The fee sought by Lead Counsel has been reviewed and approved as fair
 11 and reasonable by the Court-appointed Lead Plaintiff, a sophisticated institutional investor that
 12 was substantially involved in all aspects of the prosecution and resolution of the Action;

13 (c) Over 1.1 million copies of the Notice were disseminated to potential Class
 14 Members stating that Lead Counsel would apply for attorneys' fees in the amount of 22.5% of
 15 the Settlement Funds and reimbursement of litigation expenses in an amount not to exceed \$5.8
 16 million, and no substantive objections to the amount of fees and expenses requested were filed;

17 (d) Plaintiffs' Counsel have conducted the litigation and achieved the
 18 Settlements with skill, perseverance and diligent advocacy;

19 (e) The Action involves complex factual and legal issues and was actively
 20 prosecuted for over three years;

21 (f) Had Plaintiffs' Counsel not achieved the Settlements there would remain a
 22 significant risk that Lead Plaintiff and the other members of the Class may have recovered less or
 23 nothing from the Defendants;

24 (g) Plaintiffs' Counsel have devoted over 94,000 hours, with a lodestar value
 25 of approximately \$38.5 million at Plaintiffs' Counsel's normal billing rates and approximately
 26 \$26 million at Seattle rates, to achieve the Settlements; and

(h) The amount of attorneys' fees awarded and expenses to be reimbursed from the Settlement Funds are fair and reasonable and consistent with awards in similar cases.

6. Any appeal or any challenge affecting this Court's approval regarding any attorneys' fees and expense application shall in no way disturb or affect the finality of the Judgments.

7. Exclusive jurisdiction is hereby retained over the parties and the Class Members for all matters relating to this Action, including the administration, interpretation, effectuation or enforcement of the Stipulations and this Order.

8. In the event that the Settlements are terminated or the Effective Date of the Settlements otherwise fails to occur, this order shall be rendered null and void to the extent provided by the Stipulations.

The clerk is ordered to provide copies of this order to all counsel.

Dated November 4, 2011.



Marsha J. Pechman
United States District Judge